

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

RURAL WIRELESS ASSOCIATION, INC.

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SUMMARY

The Rural Wireless Association, Inc. (“RWA”) replies to the comments filed in response to the Federal Communications Commission’s (“FCC”) Further Notice of Proposed Rulemaking regarding the area eligibility challenge process for Mobility Fund Phase II (“MFII”).

RWA urges the FCC to adopt a challenge process that does not unduly burden Challenged Carriers or Challengers, and is administratively efficient. In its initial comments, RWA put forward an area eligibility challenge plan (“*RWA Proposal*”) that resembled the plan proposed by U.S. Cellular (dubbed “*Option A*”). Areas initially deemed ineligible for MFII support would be subject to challenge. A prospective Challenger – a wireless carrier, governmental entity, business, or individual – must have standing and timely file its formal challenge with the FCC. A Challenger must also define the Challenged Area and its basis for the challenge. Upon receiving notice of a challenge, the carrier(s) serving the Challenged Area (“Challenged Carrier(s)”) would then supply the Challenger (or a third party) with data similar to the data the FCC required for 700 MHz band coverage buildout notifications. This data would then be used to create a coverage map using a field strength measurement of -85 dBm (Reference Signal Received Power) (“RSRP”). If both the Challenger and Challenged Carrier accept the -85 dBm (RSRP) field strength coverage map, the map will be filed with the FCC. The geographic area inside -85 dBm (RSRP) would then be deemed covered by 4G LTE service and the geographic area outside -85 dBm (RSRP) would be eligible for MFII support. If either party disputes portions of the -85 dBm (RSRP) coverage map created using the Challenged Carrier’s data, the parties and/or their representatives could: (1) work to resolve the dispute by comparing methodologies; and/or (2) complete statistically representative drive/sample testing and submit this data as proof of coverage (or lack thereof).

Both the *RWA Proposal* and *Option A* are more efficient and less burdensome than proposals by the nationwide carriers and AT&T. The five largest carriers in the nation have crafted a proposal (“*Nationwide Carriers’ Proposal*”) that would require a one-time data collection from *all* carriers and the implementation of a subsequent challenge process that largely mirrors the one outlined in the *AT&T Proposal* (also known as “*Option B*”). RWA is concerned that the *Nationwide Carriers’ Proposal* is unnecessarily overbroad, inefficient, and will delay MFII implementation. Further, RWA has expressed its concerns that the *AT&T Proposal* would be inefficient and place a tremendous burden on small rural wireless carriers, in violation of the Regulatory Flexibility Act.

In regards to challenge process structure, the FCC should: (1) allow initial challenges to be submitted with a certification of a good faith belief that an area is unserved, rather than requiring a burdensome initial showing of non-coverage; (2) require that challenge response propagation maps reflect a signal strength threshold of -85 dBm (RSRP); (3) decline to adopt a minimum challenge area size. Further, the FCC should place the ultimate burden of proof on the party in possession of the coverage information. Requiring small, rural carriers to prove that unsubsidized coverage *does not* exist will be inefficient, costly, and generally unsuccessful.

Finally, the FCC should allow challenges to determine whether service is truly “unsubsidized.” The FCC should not consider wireless service provided via collocation on a tower or use of backhaul installed with universal service or other federal support to be “unsubsidized competition,” and such service should not disqualify the area served by such service from receiving MFII support.

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To: The Commission

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ replies to the comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking² regarding the area eligibility challenge process for Mobility Fund Phase II (“MFII”) in the above-captioned proceedings.

I. THE COMMISSION MUST ADOPT A CHALLENGE PROCESS THAT DOES NOT UNDULY BURDEN CHALLENGED CARRIERS OR CHALLENGERS, AND IS ADMINISTRATIVELY EFFICIENT.

In its initial comments,³ RWA put forward an area eligibility challenge plan (“RWA Proposal”) that largely resembled the plan proposed by U.S. Cellular (dubbed “Option A” in the

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural companies that serve rural consumers and those consumers traveling in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² *Connect America Fund, et al.*, [Report and Order and Further Notice of Proposed Rulemaking](#), WC Docket No. 10-90, WT Docket No. 10-208, FCC 17-11 (rel. Mar. 7, 2017) (“FNPRM”).

³ [Comments](#) of the Rural Wireless Association, Inc., WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-7 (Apr. 26, 2017) (“RWA Comments”).

FNPRM).⁴ Areas initially deemed ineligible for MFII support – where unsubsidized carriers have reported provision of LTE service at the requisite download speed and 1 Mbps upload⁵ speed in a given area on FCC Form 477 – would be subject to challenge (“Challenged Area(s)”). A prospective Challenger – a wireless carrier, governmental entity, business, or individual – must have standing and must timely file its formal challenge with the Commission. A Challenger must also define the Challenged Area as well as its basis for the challenge.

Upon receiving notice of a challenge, the carrier(s) serving the Challenged Area (“Challenged Carrier(s)”) would then supply the Challenger (or a third party) with data similar to the data the Commission required for 700 MHz band coverage buildout notifications.⁶ This data would then be used to create a coverage map using a field strength measurement of -85 dBm (Reference Signal Received Power) (“RSRP”).⁷ If both the Challenger and Challenged Carrier accept the -85 dBm (RSRP) field strength coverage map, the map will be filed with the Commission. The geographic area inside -85 dBm (RSRP) would then be deemed covered by 4G LTE service and the geographic area outside -85 dBm (RSRP) would be eligible for MFII support. If either party disputes portions of the -85 dBm (RSRP) coverage map created using the Challenged Carrier’s data, the parties and/or their representatives could: (1) work to resolve the

⁴ *FNPRM* at ¶¶ 232-240. *See also* Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at [Prelim. Proposal](#) (filed Feb. 17, 2017).

⁵ [Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification](#), WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-11 (filed Apr. 12, 2017) (asking the Commission to reconsider its 5 Mbps download area eligibility speed threshold in favor of a 10 Mbps download/1 Mbps upload threshold) (“*RWA Petition for Reconsideration*”).

⁶ *See* [Public Notice](#), Wireless Telecommunications Bureau Establishes Electronic Map Format for Covered 700 MHz Band Licensee Construction Notifications, DA 15-1193 (Oct. 16, 2015).

⁷ RWA urges the adoption of a -85 dBm (RSRP) standard. RSRP is the method way to measure LTE signal. This information is used to show the quality of LTE signal and used by the system for various functions. RSRP truly represents LTE signal coverage for the purposes of determining eligibility for MFII.

dispute by comparing methodologies; and/or (2) complete statistically representative drive/sample testing and submit this data as proof of coverage (or lack thereof).

While specifics vary, CCA agrees with RWA that the basic structure of *Option A* is a good start, noting that “the Commission should place the initial burden on the challenger to certify to a good faith belief that an area is unserved, allow the challenged party to respond with a propagation map, and permit the challenger to submit evidence of actual, on-the-ground speeds provided to consumers.”⁸ NTCA, too, suggests a structure wherein the FCC makes an initial area eligibility determination, requires carriers claiming to provide unsubsidized service in supported areas to provide additional coverage information in relevant areas, and then requires challengers to provide additional coverage data to dispute such claims.⁹

a. Both the *RWA Proposal* and *Option A* are More Efficient and Less Burdensome than Proposals by the Nationwide Carriers and AT&T.

The five largest carriers in the nation¹⁰ have crafted a proposal (“*Nationwide Carriers’ Proposal*”) that would require a one-time data collection from *all* carriers and the implementation of a subsequent challenge process that largely mirrors the one outlined in the *AT&T Proposal* (also known as “*Option B*”).¹¹ While appreciative of efforts by these carriers and CTIA, RWA is concerned that the *Nationwide Carriers’ Proposal* is unnecessarily

⁸ [Comments](#) of Competitive Carriers Association, WC Docket No. 10-90, WT Docket No. 10-208, at p. 2 (Apr. 26, 2017) (“*CCA Comments*”).

⁹ [Comments](#) of NTCA – The Rural Broadband Association, WC Docket No. 10-90, WT Docket No. 10-208, at pp. 7-9 (Apr. 26, 2017) (“*NTCA Comments*”).

¹⁰ See *CCA Comments* at p. 11. The nation’s five largest carriers are Verizon Wireless, AT&T, T-Mobile, Sprint, and US Cellular. See Mike Dano, *How Verizon, AT&T, T-Mobile, Sprint and More Stacked Up in Q4 2016: The Top 7 Carriers*, FierceWireless (Mar. 8, 2017).

¹¹ [Comments and Petition for Reconsideration](#) of CTIA, WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 26, 2017) (“*CTIA Comments*”). See also [AT&T Services, Inc., Atlantic Tele-
Network, Inc., and Buffalo-Lake Erie Wireless Systems Co. Revised Joint Proposal for Mobility
Fund Phase II](#), WT Docket No. 10-208, WC Docket No. 10-90 (Feb. 9, 2017) (“*AT&T
Proposal*”).

overbroad, inefficient, and will delay MFII implementation. RWA has expressed its concerns in the past regarding the exclusive use of Form 477 data to make MFII area eligibility determinations,¹² and supports the submission of additional coverage data where it is warranted,¹³ but *does not* believe it necessary for *every* carrier to resubmit coverage data *throughout the entire nation* as part of this process when: (1) subsidized coverage data does not determine an area's eligibility for MFII support; and (2) allegedly unsubsidized coverage data will be relevant to MFII support eligibility in only certain rural portions of the country that are challenged.

Further, RWA has expressed its concerns that the *AT&T Proposal* would be inefficient and place a tremendous burden on small rural wireless carriers, in violation of the Regulatory Flexibility Act.¹⁴ The *AT&T Proposal* would require rural carriers to drive test or app-test tens of thousands of census blocks using the proposed protocol in just 60 days.¹⁵ RWA's members believe this would be an arduous and tremendously costly – if not impossible – task. Other commenters share this concern, noting “[w]ithin a compressed timeframe of 60 days, challenging carriers would have to present their drive test and speed test data for all areas they

¹² See, e.g., [Letter](#) from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, Rural Wireless Association, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, WC Docket No. 10-90, at p. 6-9 (Aug. 23, 2016) (“*RWA August Ex Parte*”).

¹³ See *RWA Comments* at pp. 2-7.

¹⁴ See *id.* at pp. 7-13; see also [Letter](#) from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 10-208, WC Docket No. 10-90 (Feb. 16, 2017) (“*RWA February Ex Parte*”). Congress has directed that “agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and government jurisdictions subject to regulation.” 5 U.S.C. § 601, [Congressional Findings and Declaration of Purpose](#). See Federal Communications Commission, [FCC Directive](#), Regulatory Flexibility Act of 1980, as amended (P.L. 96-354) and the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), FCCINST. 1158.2 (2011).

¹⁵ *RWA Comments* at p. 8.

wish to challenge. Even for areas that are ‘obviously mis-categorized,’ challenging carriers would have to comply with the same procedure... Thus, *Option B* would create a process that is less efficient [than *Option A*] for challengers.”¹⁶

In addition to being inefficient, the challenge process procedures imposed by *Option B* would place a tremendous burden on small rural wireless carriers. RWA rejects the unsupported contention made by ATN International, Inc. (“ATN”) and Buffalo-Lake Erie Wireless System’s, LLC d/b/a Blue Wireless (“Blue Wireless”) that “[a]ny carrier that is serious about participating in Mobility Fund Phase II should not have any trouble conducting drive tests in order to establish the eligibility of areas on which it wishes to bid.”¹⁷ While it is true that a small rural wireless carrier may use drive-test equipment or app-based speed test measurements to determine coverage in parts of its service area prior to or after making network adjustments, these types of small-scale tests do not resemble the large-scale effort that would be necessitated under *Option B*. As other parties have indicated in this proceeding, such an undertaking would take many months and tremendous financial resources.¹⁸ Further, ATN and Blue Wireless’

¹⁶ *CCA Comments* at p. 6.

¹⁷ [Comments](#) of ATN International and Buffalo-Lake Erie Wireless Systems LLC d/b/a Blue Wireless, WC Docket No. 10-90, WT Docket No. 10-208, at p. 3 (Apr. 26, 2017).

¹⁸ [Letter](#) from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to Union Telephone Company d/b/a Union Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 16, 2017) (stating that the *AT&T Proposal* would “prove to be extremely burdensome, especially for small carriers” because it would require challenging carriers to test thousands of census blocks in a very short period of time). *See also* [Letter](#) from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to Cellular South, Inc. d/b/a C Spire, NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Smith Bagley, Inc., East Kentucky Network, LLC d/b/a Appalachian Wireless, Nex-Tech Wireless, LLC, Union Telephone Company d/b/a Union Wireless, Pine Cellular Phones, Inc. and Cellular Network Partnership, d/b/a Pioneer Cellular (the “LLGS Carriers”), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 16, 2017) (noting that: (1) testing 10,000 census blocks, just 5% of the total census blocks in Oregon, is estimated to take, at a minimum, 1,111 nine-hour shifts of work; and (2) substantial drive testing and reporting data could take small carriers 6 months or longer – much more than the *AT&T’s*

professed difficulty imagining that “any carrier will express a reasonable concern about the burdens [*Option B*] imposes must similarly be rejected. RWA, CCA, and NTCA – The Rural Broadband Association have all expressed serious concerns about the use of *Option B* on behalf of their rural and small carrier members.¹⁹ MFII is based on geographic area, not on road miles. The logistical effort necessary to obtain proper permission to access these areas, and then actually travel to all of these areas to gather proof, is unnecessary and overly burdensome when coverage could easily be established via coverage maps created by the Challenger with the Challenged Carrier's data, and then enhanced (if necessary) with on-the-ground sample data collections.

Rather than burdening *all* carriers by requiring the resubmission of coverage data *everywhere* like the *Nationwide Carriers' Proposal*, or burdening challengers by requiring the submission of extensive unsubsidized coverage data without any information other than Form 477 data in a too-short time period like the *AT&T Proposal*, both *Option A* and the *RWA Proposal* walk a fine line of requiring additional data where necessary without being over inclusive. Further, RWA estimates that the Commission could begin both *Option A* and the *RWA Proposal* relatively quickly, whereas a nationwide data collection will take significantly more time – particularly if it necessitates Office of Management & Budget approval of the data collection.

Proposal's 60 days; and that “small carriers do not have anywhere near the physical resources needed to test thousands of census blocks or drive test a substantial portion of their rural service areas, pursuant to the [*AT&T Proposal*].”).

¹⁹ See *RWA February Ex Parte* at pp. 7-13; see also *CCA Comments* at pp. 3-4; see also *NTCA Comments* at pp. 9-10.

b. Challenge Process Structure Should Allow Initial Challenges to be Submitted With a Certification of a Good Faith Belief That an Area is Unserved.

Comments offered by RWA²⁰ and CCA²¹ envision a scenario in which parties submit challenges based on a certification of a good faith belief that an area is unserved, and no additional information is required at that initial stage. CCA notes that “[f]or initial challenges, the Commission should not require evidence other than a certification of a good faith belief that an area is unserved.”²² RWA is concerned that requiring an initial showing of non-coverage by the challenging party – as proposed by in the *Nationwide Carriers*,²³ and *AT&T Proposals*²⁴ – would render the challenge process inoperable in many areas. CCA shares this concern, stating that “[b]y placing the initial burden on challenging parties to provide evidence of non-coverage, the Commission would drastically limit the ability of interested parties to challenge assertions of qualifying coverage, and effectively foreclose challenges altogether in many parts of the country.”²⁵ NTCA has also expressed concern regarding this issue, noting that “placing the initial burden on the party claiming coverage to substantiate/correct its claim makes the most sense and is the most efficient process as the unsubsidized competitor claiming service territory presumably has the best knowledge of its actual service boundaries...why should the small rural provider be required to use substantial resources to guess at and recreate what [a nationwide carrier] already has on hand to substantiate those claims?”²⁶

Instead of requiring proof of non-coverage, a certification of a good faith belief that an area is unserved is sufficient. As CCA notes, “the Commission has recognized in developing

²⁰ RWA *Comments* at p. 4.

²¹ CCA *Comments* at pp. 2, 12.

²² *Id.* at p. 2.

²³ CTIA *Comments* at p. 2.

²⁴ AT&T *Proposal* at pp. 4-5.

²⁵ CCA *Comments* at p. 6.

²⁶ NTCA *Comments* at pp. 6-7.

challenge processes in the past, a signed certification is a reasonable evidentiary option to afford a challenging party given ‘the difficulty in proving a negative.’”²⁷ Further, “*Option A* is consistent with the fundamental structure of the Commission’s framework for identifying eligible areas, which presumes that such provider certifications furnish adequate grounds for an eligibility determination absent a rebuttal.”²⁸

c. There is Broad Consensus That Challenge Response Propagation Maps Should Reflect a Signal Strength Threshold of -85 dBm (RSRP).

Pursuant to RWA’s challenge proposal, coverage information from the Challenged Carrier would be used to create a coverage map using a field strength measurement of -85 dBm (RSRP). RWA has long supported the use of a -85 dBm (RSRP) field strength measurement to determine whether or not an area is covered for the purposes of MFII.²⁹ Several other parties, including CCA, Deere & Company, and NTCA agree. Deere & Company “supports a rule that specifies a signal strength threshold of [at least] -85 dB” and states that, rather than a -90 dB standard, the “-85 dB measure more accurately reveals areas where service quality is not reasonably comparable to that which is available in urban areas.”³⁰ Further, Deere recommends that an -85 dB measure be adopted “as a preferable measure to ensure a reliable signal for LTE data transfers in the range of three to five miles from a cellular tower.”³¹

²⁷ *CCA Comments* at p. 5; *see also Connect America Fund*, [Report and Order](#), DA 13-1113, 28 FCC Rcd 7211, 7218 ¶ 15 (rel. May 16, 2013) (noting that, in light of “the difficulty in proving a negative,” a subsidized carrier may challenge an area initially determined to be served by an unsubsidized competitor by providing a “variety of . . . signed certification[s]” demonstrating a lack of service).

²⁸ *CCA Comments* at pp. 4-5; *see also FNPRM* at ¶¶ 3, 226 (suggesting that Form 477 data is reliable enough for pre-challenge determinations because they are “provider-filed and certified”).

²⁹ *RWA August Ex Parte* at p. 8.

³⁰ [Comments](#) of Deere & Company, WC Docket No. 10-90, WT Docket No. 10-208, at pp. 7-8 (Apr. 26, 2017) (“*Deere & Company Comments*”).

³¹ *Id.* at p. 8.

NTCA, too, supports the use of a -85 dB signal strength measurement. The NTCA proposal would require identified unsubsidized carriers to provide a “declaration of service” in currently supported areas that the Commission initially deems ineligible. This declaration of service would include technical support, including an engineering propagation map that demonstrates that claimed coverage using a -85 dB measure.³² Along with U.S. Cellular in *Option A*, CCA agrees that a -85 dBm (RSRP) signal strength threshold for propagation maps is appropriate, stating that “[i]n CCA members’ experience, minimum signal strength of -85 dBm (RSRP) reasonably reflects what consumers would consider ‘good’ performance.”³³

d. The Commission Should Decline to Adopt a Minimum Challenge Area Size.

In its initial Comments, RWA briefly discussed the issue of a minimum challenge area size, but did not commit to a specific minimum square mileage figure.³⁴ After further discussion with its carrier members and additional study regarding the wide variation in census block size, RWA concludes that the Commission should not adopt a minimum challenge area size. Other parties agree, noting that the “Commission should establish a low minimum area size for challenges, if any minimum at all. Census blocks oftentimes are much larger in rural areas and even identifying a specific percentage of a census block could preclude challenges to address the need for broadband in areas of significant agricultural operations.”³⁵ CCA, too, states that “the Commission should decline to adopt a minimum size for the area initially challenged to avoid excluding difficult-to-serve communities from LTE coverage. There should be no genuine

³² *NTCA Comments* at p. 8.

³³ *CCA Comments* at p. 15.

³⁴ *RWA Comments* at p. 4.

³⁵ *Deere & Company Comments* at p. 7.

concern that challenging parties will waste the Commission’s time and resources – and their own – by targeting ‘de minimis’ parcels of no value to consumers.”³⁶

II. THE COMMISSION SHOULD ALLOW CHALLENGES TO DETERMINE WHETHER SERVICE IS TRULY “UNSUBSIDIZED.”

The Commission should not consider wireless service that makes use of towers or backhaul facilities built or operated with universal service or other federal support to be “unsubsidized competition,” and such indirectly subsidized service should not disqualify the area served by such indirectly subsidized service from receiving MFII support. This issue is the subject of a petition for reconsideration filed by several rural wireless carriers,³⁷ and was briefly discussed in RWA’s initial comments.³⁸ This issue has been clearly explained,³⁹ but will be summarized here for ease of reference. In its *MFII Order*, the Commission declared that “all areas lacking unsubsidized, qualifying 4G LTE service will be eligible for the auction,”⁴⁰ because “any given area with any provider of unsubsidized qualified 4G LTE is unlikely to be at risk of losing coverage.”⁴¹ The Commission provided no factual support for these statements, relying instead on the proposition that if a carrier receiving no universal service support can provide service in an area, then the area would have coverage without support.

However, when service is provided using a subsidized tower or using backhaul facilities that are built and/or maintained with universal service or other federal support, such wireless service is *not unsubsidized*:

³⁶ *CCA Comments* at p. 2.

³⁷ *Connect America Fund, et al.*, [Petition for Reconsideration and Clarification of Rural Wireless Carriers](#), WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 27, 2017) (“*Rural Wireless Carriers Petition for Reconsideration*”).

³⁸ *RWA Comments* at pp. 4, 7

³⁹ *Rural Wireless Carriers Petition for Reconsideration* at pp. 19-21.

⁴⁰ *FNPRM* at ¶ 39; *see also id.* at ¶ 52) (stating that “any census block that is not fully covered by unsubsidized 4G LTE will contain areas that are eligible for support in the MFII auction”).

⁴¹ *Id.* at ¶ 53.

When a carrier builds a tower in a remote location, in a place where no other carrier has constructed, the costs sometimes run as high as \$1 million to build a road, bring in power, install fiber/microwave, remove trees, reclaim land, construct a tower, get building, zoning, National Environmental Policy Act, and related permits, and incur all related costs. A collocator [or backhaul user] incurs *none* of those costs. It has the luxury of hanging an antenna on the subsidized carrier's existing tower, installing equipment in an existing or new shed, and paying rent. That kind of market entry is much more accurately described as subsidized competition, because the newcomer would probably never go through what the subsidized carrier went through to initiate service without support. Indeed, the newcomer is a beneficiary of the support that was provided to the carrier that built the tower, just as if the unsubsidized carrier had received the support payment directly. They are an "unsubsidized" carrier in name only.⁴²

RWA urges the Commission to recognize that when wireless service is provided using subsidized towers and/ or backhaul facilities, such service is *not unsubsidized*. If a Challenger bases its challenge on the Challenged Carrier's status as an unsubsidized carrier in the Challenged Area, the Challenger should produce evidence that the Challenged Carrier is not an unsubsidized carrier in the Challenged Area.⁴³ The Challenged Carrier will then have an opportunity to dispute the claim. The Commission should also require Challenged Carriers to provide propagation maps/coverage data that reflect only service provided using their own unsubsidized towers and/or backhaul facilities in response to a challenge. Coverage from a subsidized carrier's tower or utilizing a subsidized source of backhaul should not be included and counted as unsubsidized area. The Commission must determine that an area's coverage is subsidized if any carrier is using a subsidized tower, backhaul or any other subsidized facilities. An allegedly unsubsidized carrier using subsidized facilities cannot be considered to provide unsubsidized coverage for that area.

⁴² *Rural Wireless Carriers Petition for Reconsideration* at pp. 20-21.

⁴³ Unlike coverage data, carrier challengers are likely to have knowledge (and proof) of a Challenged Carrier's use of subsidized infrastructure. They are often the owners of, or at least co-tenants on, such infrastructure and in many cases also know whether any of the backhaul facilities are subsidized.

III. THE COMMISSION SHOULD PLACE THE BURDEN OF PROOF ON THE PARTY IN POSSESSION OF THE COVERAGE INFORMATION.

Regardless of which specific challenge plan the Commission adopts, the burden of proving the existence of unsubsidized coverage at the requisite speeds must be on the unsubsidized service provider – the party that actually has access to the information. RWA agrees with CCA that the Commission should “place the ultimate burden of persuasion on the challenged party, given the relative ease with which a wireless carrier can confirm that service is available on its own network.”⁴⁴ Requiring small, rural carriers to prove that unsubsidized coverage *does not* exist is inefficient, costly, and generally impossible to do without massive resources and time.

Placing the burden of proof on Challengers would also contravene precedent. The Commission has previously found that “it is extremely difficult for a . . . provider to prove a negative – that a competitor is not serving an area. Rather, the purported competitor is in a much better position to confirm that it is offering service in a given area.”⁴⁵ RWA agrees with NTCA that “[g]iven the potentially devastating consequences of . . . lost coverage to consumers, consistent with the challenge process adopted in the context of updating non-model “rate-of-return” wireline universal service support, the Commission should instead require providers who have actual knowledge of their coverage territory and who certified their coverage⁴⁶ to file the

⁴⁴ CCA Comments at p. 7.

⁴⁵ Connect America Fund, *et al.*, [Report and Order, Order, and Order on Reconsideration, and Further Notice of Proposed Rulemaking](#), WC Docket No. 10-90, *et.al.*, ¶ 130 (rel. Mar. 30, 2016), citing Public Notice, [Wireline Competition Bureau Publishes Preliminary Determination of Rate of Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors](#), WC Docket No. 10- 90, DA 15-868, at ¶ 19 (rel. July 29, 2015); *see also* NTCA Comments at p. 5.

⁴⁶ FCC Form 477 – Local Telephone Competition and Broadband Reporting, [Instructions](#), at p. 24 (accessed May 9, 2017).

underlying data that they presumably used to validate that coverage prior to certification.”⁴⁷

The Commission’s rationale is not only applicable in the wireline context. Wireless networks have a tremendous number of variables that make it very difficult for network operator to project where its competitor does and does not have service. Such variables include spectrum holdings, optimization strategies, service priorities, location of tower sites, antenna configurations, and terrain. RWA agrees that “each challenged carrier is in the best position to understand the strengths, limitations, and characteristics of its own mobile broadband network, and to develop evidence confirming the presence of coverage in a disputed location.”⁴⁸

IV. THE COMMISSION SHOULD NOT LIMIT CHALLENGER ELIGIBILITY.

Regardless of which specific challenge plan the Commission adopts, it should not restrict challenge process participation only to wireless carriers or government bodies.⁴⁹ RWA supports allowing carriers, governmental entities, businesses and individuals with standing to take part in the challenge process. Deere & Company agrees, stating that in determining “*who* is eligible to raise challenges,” the Commission should “err on the side of flexibility in order to encourage appropriate participation of stakeholders in the process” and “welcome[] the submission of on-the-ground coverage information regardless of the classification of the entity providing such information.”⁵⁰ CCA similarly agrees, stating that “the Commission must avoid restrictions that would result in a less accurate and robust challenge procedure” and “[c]onsistent

⁴⁷ *NTCA Comments* at p. 2.

⁴⁸ *CCA Comments* at p. 8.

⁴⁹ *Option A* states that only a carrier submitting a challenge within its licensed area or a state or local government submitting a challenge within its jurisdiction should be permitted to participate. *See FNPRM* at ¶ 227. *Option B* would allow only “service providers and governmental entities located in or near the relevant areas” to participate. *See id.* at ¶ 233.

⁵⁰ *Deere & Company Comments* at p. 4.

with Commission precedent and the aims of universal service policy, the Commission should not limit challenges to service providers and governmental entities alone.”⁵¹

By narrowly limiting the types of entities that can challenge the Form 477 data, the Commission may inadvertently create a less accurate and robust challenge procedure. As Deere & Company further notes, “[l]ocal governmental entities, for example, may not have sufficient resources to test and submit data improvement recommendations. Similarly, potential service providers may have limited resources to perform tests in supposedly covered areas that are not adjacent to their current service area.”⁵² RWA agrees that “[t]he need to allow non-carriers to file challenges is especially critical given that the ‘purpose of universal service is to benefit the customer, not the carrier. Those who have the greatest interest in the successful deployment of 4G LTE, as well as first-hand knowledge of the local situation, should not be excluded from the process of determining where additional build-out is most needed.”⁵³

As RWA has previously stated, limiting the type of entity that may submit a challenge is not necessary to deter frivolous challenges.⁵⁴ RWA agrees that “there is no public interest reason to prohibit stakeholders”⁵⁵ from participating and that “requiring challenging parties to certify to a good faith belief that the challenged area is unserved...[will] prevent[] parties from filing baseless disputes with a limited likelihood of success.”⁵⁶ Further, the Commission’s existing rules prohibit license holders and others from “intentionally provid[ing] material factual information that is incorrect or intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or

⁵¹ *CCA Comments* at p. 2.

⁵² *Deere & Company Comments* at p. 5.

⁵³ *CCA Comments* at p. 9.

⁵⁴ *RWA Comments* at p. 4.

⁵⁵ *Deere & Company Comments* at p. 5.

⁵⁶ *CCA Comments* at p. 4.

misleading,” and from providing incorrect information “without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁵⁷ RWA agrees that requiring parties to certify to their good faith belief will prevent potential challengers from filing baseless challenges that do nothing but burden challenged carriers and the Commission.

V. CONCLUSION

RWA urges the Commission to adopt a challenge process that does not unduly burden challenged carriers or challengers, and that is also administratively efficient. Like other parties in this proceeding, RWA supports a challenge structure wherein the FCC: (1) makes an initial area eligibility determination; (2) places the initial burden on the challenger to certify to a good faith belief that an area is unserved; (3) requires carriers claiming to provide unsubsidized service to provide additional coverage information in relevant areas; and (4) then requires challengers to provide additional coverage data to dispute such claims. Such a structure is more efficient and less burdensome than other proposals requiring a time-consuming nationwide coverage data resubmission and tremendously expensive initial drive/app testing.

Further, RWA urges the Commission to allow challenges disputing whether service is truly “unsubsidized,” and adopt a requirement that challenge response propagation maps reflect a signal strength threshold of -85 dBm (RSRP). The Commission *should not* adopt a minimum challenge area size or restrict challenge process participation only to wireless carriers or government bodies. Regardless of which specific challenge plan the Commission adopts, the burden of proving the existence of unsubsidized coverage at the requisite speeds must be on the unsubsidized service provider – the party that actually holds the data. RWA looks forward to its continued work with the Chairman, Commissioners, and Commission staff in this proceeding.

⁵⁷ 47 C.F.R. § 1.17(a).

Respectfully submitted,

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